

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INDUSTRIAL INFO RESOURCES,
INC.,

Plaintiff,

v.

MICHAEL JOHN VANDERMOLEN
and ODDITY SOFTWARE, LLC,

Defendants.

Case No. 1:07-CV-526

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Plaintiff Industrial Info Resources, Inc.'s Motion for Default Judgment against Defendant Oddity Software, LLC. Plaintiff has filed supporting affidavits and exhibits showing an entitlement to relief in this matter. Oral argument is unnecessary.

Plaintiff has sued both Oddity Software, LLC and Michael John Vandermolen for damages arising from copyright infringement by them. While Defendant Vandermolen has appeared and defended, Defendant Oddity Software, LLC has not. Notwithstanding Plaintiff's demonstration that it is entitled to some monetary relief, the Court cannot now enter default judgment against Oddity Software, LLC given that the liability as to the copyright violations may be joint and several pursuant to 17 U.S.C. § 504(c)(1)-(2). *See Branch v. Ogilvy & Mather, Inc.*, 772 F.Supp. 1359, 1364 (S.D.N.Y. 1991) (holding that statute imposes joint and several liability as to jointly caused violations, and citing cases). The United States Supreme Court explained in *Frow v. Del La Vega*, 82 U.S. 552, 554 (1872), that the adjudication of a default judgment concerning a possible joint and several liability must await the adjudication of claims against the non-defaulting party to avoid

inconsistent judgments. This rule has been followed in this Circuit. *See Kimberly v. Coastline Coal Corp.*, 857 F.2d 1474, 1988 WL 93305, *3 (6th Cir. 1988) (unpublished decision).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Industrial Info Resources, Inc.'s Motion for Default Judgment (Dkt. No. 26) is **DENIED** without prejudice, pending adjudication or other resolution of the claims against the non-defaulting Defendant.

DATED in Kalamazoo, MI:
October 10, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE